

JUN 26 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID CHARLES PUHER,

Defendant - Appellant.

No. 01-30133

D.C. No. CR-99-00145-HRH

MEMORANDUM*

Appeal from the United States District Court
for the District of Alaska
H. Russel Holland, Chief Judge, Presiding

Argued and Submitted June 5, 2003
Seattle, Washington

Before: HUG, B. FLETCHER, and McKEOWN, Circuit Judges.

David Puher appeals his 50-month sentence for Interstate Transmission of Extortionate Threats. He asserts that the court erred in imposing a two-level enhancement for obstruction of justice under § 3C1.1 of the Sentencing Guidelines. The primary basis for the enhancement was a series of phone calls

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placed from jail to the residence of the victims. The calls were placed by an operator; the recipients did not accept the calls and never spoke to the person initiating them. The trial court found that these calls were placed at Puher's instigation.

Puher argues that the district judge erred in failing to make a finding as to the intent element required for obstruction of justice, and that in any event there was insufficient evidence to find intent in the record because the calls were not completed and no one knows their purpose. Because the judge adopted the presentence report, which did address the matter of Puher's intent, the critical question is one of sufficiency of the evidence.

It is unreasonable for Puher not to have foreseen that his placing calls from the local jail on five successive nights to the victims of his previous telephonic threat would have been threatening to them, particularly in light of the fact they were potential witnesses against him. Even absent any successful communication to them, sufficient evidence supports the district court's finding that the threatening nature of this conduct supported an obstruction of justice enhancement. *See U.S. v. Dota*, 33 F.3d 1179, 1189-90 (9th Cir. 1994).

Because we affirm on this ground, we need not reach the judge's alternative basis for the obstruction of justice enhancement. The district court is

AFFIRMED.